

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JAMES R. PHILLIPS, JR.,

Petitioner,

v.

KEITH SMITH,

Respondent.

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CASE NO. 3:11 CV 1205

JUDGE JAMES S. GWIN

MEMORANDUM OF OPINION
AND ORDER

On June 10, 2011, petitioner *pro se* James R. Phillips, Jr., filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Phillips seeks to challenge his 2009 conviction, pursuant to a jury verdict, for rape. For the reasons stated below, the petition is denied and this action dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, a petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

Phillips seeks to raise five grounds in support of the petition. It appears evident on the face of the petition, however, that he has not yet sought review of his conviction in the Ohio Supreme Court. Such review may be available, *see* Ohio Sup.Ct.R.P. II, sec. 2(A)(4)(a), and must be sought in order to exhaust state court remedies. *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994).

Accordingly, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases, without prejudice to refiling upon exhaustion of state court remedies. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed. R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

Dated: September 21, 2011

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE